

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

The Construction Site Known as Big River 1 Solar
Swinerton Builders
260 Townsend Street
San Francisco, CA 94107

ATTENTION:

Sheri Ann Murphy
Senior Vice President and General Counsel
shmurphy@swinerton.com

Request to Provide Information Pursuant to the Clean Water Act

The U.S. Environmental Protection Agency is requiring Swinerton Builders (Swinerton or you) to submit certain information about the facility at County Road 1200 North and County Road 400 East, Enfield Township, Illinois (facility or site). Appendix A provides the instructions needed to answer this information request, including instructions for electronic submissions. Appendix B specifies the information that you must submit. You must send this information to us within 30 calendar days after you receive this request. If you are unable to respond in a timely fashion because of impacts related to the COVID-19 pandemic, please submit a written extension request via email to Hewitt.Jason@epa.gov, explaining the specific impacts on your ability to respond.

We are issuing this information request under Section 308(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1318(a). Section 308(a) authorizes the Administrator of EPA to require the submission of information. The Administrator has delegated this authority, through redelegations, to the Director of the Enforcement and Compliance Assurance Division, Region 5.

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, among other things, that whenever required to carry out an objective of the Act, the Administrator of EPA shall require the owner or operator of any point source to: establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and provide such other information as the Administrator may reasonably require.

Swinerton owns and/or operates a point source at the facility. We are requesting this information to determine whether this source is complying with the CWA.

Swinerton must send all required information to R5WECA@epa.gov and to Hewitt.Jason@epa.gov. If, for some reason, materials cannot be transmitted electronically, submissions can be sent to:

Water Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 5
Attn: Jason Hewitt, ECW-15J
77 W. Jackson Boulevard
Chicago, Illinois 60604

Swinerton must submit all required information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a).

As explained more fully in Appendix A, Swinerton may assert a claim of business

confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information submitted to us. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If Swinerton does not assert a business confidentiality claim when submitting the information, EPA may make this information available to the public without further notice. Swinerton should be aware, however, that pursuant to Section 308(b) of the CWA, 33 U.S.C. § 1318(b), and 40 C.F.R. § 2.302(e), effluent data, standards, and limitations are not eligible for confidential treatment.

This information collection is exempt from the Paperwork Reduction Act under 44 U.S.C. § 3518(c)(1)(B).

We may use any information submitted in response to this request in an administrative, civil or criminal action. Failure to comply fully with this information request may subject Swinerton to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. §§ 1001 and 1341.

You should direct any questions about this information request to Jason Hewitt at (312) 353-3114.

Date

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

Appendix A

When providing the information requested in Appendix B, use the following instructions and definitions.

Instructions

1. Provide a separate narrative response to each question and subpart of a question set forth in Appendix B.
2. Precede each answer with the number of the question to which it corresponds and, at the end of each answer, identify the person(s) who provided information used or considered in responding to that question, as well as each person consulted in the preparation of that response.
3. Indicate on each document produced, or in some other reasonable manner, the number of the question to which it corresponds.
4. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
5. Where information or documents necessary for a response are neither in your possession nor available to you, indicate in your response why the information or documents are not available or in your possession, and identify any source that either possesses or is likely to possess the documents or information.
6. If information is not known or not available to you as of the date of submission and later becomes known or available to you, you must supplement your response. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or incorrect, you must notify EPA as soon as possible.

Confidential Business Information and Personally Identifiable Information Notice

You may assert a business confidentiality claim covering any parts of the information requested in the attached Appendix B, as provided in 40 C.F.R. § 2.203(b).

To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document for which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a caption or other suitable form of notice to indicate the intent to claim confidentiality. The stamped or typed caption or other suitable form of notice should employ language such as “trade secret” or “proprietary” or “company confidential” and indicate a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by EPA only to the extent permitted and by means of the procedures set forth at 40 C.F.R. Part 2. Please clearly identify portions of otherwise non-confidential documents that you are claiming as confidential. EPA will construe the failure to furnish a confidentiality claim with your response to the information request may result in the information being made available to the public without

further notice to you. EPA's confidential business information (CBI) regulations are at 40 C.F.R. Part 2, Subpart B (sections 2.201-2.311). See <https://www.ecfr.gov>.

Please segregate any personnel, medical and similar files from your responses and include that information on a separate sheet(s) marked as "Personal Privacy Information." Disclosure of such information to the general public may constitute an invasion of privacy.

Electronic Submissions

To aid in our electronic recordkeeping efforts, we request that you provide all documents responsive to this information request in an electronic format according to paragraphs 1 through 5, below. These submissions are in lieu of hard copy.

1. Provide all responsive documents in Portable Document Format (PDF) or similar format, unless otherwise requested in specific questions. If the PDFs are scanned images, perform at least Optical Character Recognition (OCR) for "image over text" to allow the document to be searchable. Submitters providing secured PDFs should also provide unsecured versions for EPA use in repurposing text.
2. When specific questions request data in electronic spreadsheet form, provide the data and corresponding information in editable Excel or Lotus format, and not in image format. If Excel or Lotus formats are not available, then the format should allow for data to be used in calculations by a standard spreadsheet program such as Excel or Lotus.
3. Provide a table of contents for the electronic documents submitted in response to our request so that each document can be accurately identified in relation to your response to a specific question. *We recommend the use of electronic file folders organized by question number.*
4. Please provide documents claimed as CBI in separate file folders apart from the non-confidential information. This will facilitate appropriate records management and appropriate handling and protection of the information claimed as CBI.
5. Certify that all electronic submittals including attached files have been scanned for viruses and indicate what program was used.

Definitions

All terms used in this Information Request have their ordinary meaning unless such terms are defined in the CWA, 33 U.S.C. § 1251 *et seq.*, or 40 C.F.R. Part 122.

1. "Act" or "CWA" means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*
2. "Day" or "days" means a calendar day unless expressly stated to be a working day. In computing any period of time under this Information Request, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business on the next working day.

3. “Discharge of a pollutant,” as defined in Section 502(12) of the CWA, means *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
4. “Navigable waters,” as defined in Section 502(7) of the CWA, means “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
5. “NPDES Permit” and “Permit” mean National Pollutant Discharge Elimination System (NPDES) Permit No. ILR10ZA5C, issued by the State of Illinois for the Site in accordance with Section 402 of the CWA, 33 U.S.C. § 1342. The “NPDES Permit” and the “Permit” include the provisions of the General NPDES Permit for Stormwater Discharges from Construction Site Activities issued by the Illinois Environmental Protection Agency, effective August 3, 2018.
6. “Outfall” means a type of “point source,” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), that serves as a discharge point from the facility.
7. “Record” or “records” means any recording of information in tangible or intangible form. It includes, but is not limited to documents, memoranda, reports, letters, maps, graphs, charts, log books, notes, computer printouts, and computer databases.
8. “Storm water” shall mean storm water runoff, snow melt runoff, surface runoff and drainage.
9. “Site” means the property located at County Road 1200 North and County Road 400 East, Enfield Township, Illinois and covered by NPDES Permit ILR10ZA5C.
10. “Wastewater” shall mean any water/liquid and all material conveyed with that water/liquid that contains process wastewater, discarded material, noncontact cooling and/or heating water, or domestic wastewater.
11. “You” or “Your” for purposes of this Information Request refers to Swinerton Builders and any divisions and subsidiaries and to any managers, officers, agents, employees, contractors, or other entities that perform work or act in any way on behalf of, or at the direction of Swinerton Builders, including but not limited to Big River Solar LLC, D.E. Shaw Group, or D.E. Shaw Renewable Investments (DESRI).
12. “Point source,” as defined in Section 502(14) of the CWA, means “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
13. “Pollutant,” as defined in Section 502(6) of the CWA, means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock,

sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.”
33 U.S.C. § 1362(6).

Appendix B

Information You Are Required to Submit to EPA

You must submit the following information pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a). Unless otherwise noted, all documents requested should be from the start of construction at the Site to the date of this request letter:

1. Please provide copies of all inspection reports and other Records prepared and kept at the Site pursuant to Section IV.D.4. (“Inspections”) and Section IV.D.5. (“Corrective Actions”) of the Permit.
2. For the Site, please respond to the following sub-questions in writing and provide the requested Records from the start of construction at the Site to the date of this request letter:
 - a. For each person who conducted the inspections at the Site required by Section IV.D.4. of the Permit, identify the person and explain how that person met the inspector qualifications set forth in Section IV.D.4. of the Permit at the time they conducted the inspection(s) and provide all supporting documentation.
 - b. For each person who signed an inspection report for the Site prepared under Section IV.D.4 of the Permit, identify the person and explain how that person met the signatory requirements in Section VI.G. of the Permit at the time of the inspection and provide all supporting documentation. If that person is a “duly authorized representative” pursuant to Section VI.G.2 of the Permit, please provide a copy of the written authorization that was required to be submitted to the Illinois Environmental Protection Agency (“IEPA”) under that Section.
 - c. Please indicate if any weekly inspections at the Site, or any inspections at the Site in response to a qualifying precipitation event, as required by Section IV.D.4. of the Permit, were not conducted or if any such inspections did not include an inspection of all required areas, locations, discharge points or control measures. If an inspection was missed, please identify the week missed and/or, as relevant, the date of the qualifying precipitation event (and the amount of precipitation) and

explain why the inspection was not conducted. If a partial inspection(s) was conducted, please identify the date of each partial inspection and which required areas, locations, discharge points, and control measures were not inspected and why.

- d. Please indicate if any corrective actions identified during any required inspections were not completed within seven calendar days of discovery, provide the documentation required by Section IV.D.4. of the Permit and indicate when the corrective action was completed. If You do not have the required documentation for any incidence for which You exceeded the 7-day timeframe, please provide the information required by Section IV.D.4 of the Permit for each such incidence in a narrative response to this request.
 - e. Please explain how You determine whether a qualifying rain event that triggers an inspection has occurred. If You keep precipitation records, please provide a copy of those records.
 - f. Provide the start date of construction at the Site along with the dates that construction was completed for any portions of the Site.
 - g. Provide the interim and permanent stabilization dates for any portion of the Site.
3. Representatives of the United States Environmental Protection Agency conducted an inspection at the Site on April 20, 2021. During that inspection, the EPA representatives had a copy of the December 22, 2020 Stormwater Pollution Prevention Plan (“SWPPP”) for the Site prepared by Kimley-Horn that EPA downloaded from the IEPA website. Please provide any amendments or modifications to that SWPPP prepared in accordance with Section IV.C. of the Permit, indicate the date of each amended or modified SWPPP, and explain the reason for each amendment or modification. For the December 22, 2020 version of the SWPPP and for each amended or modified SWPPP, please indicate whether the SWPPP accurately reflected the items required in Part IV.D. (“Content of the Plan”) of the Permit for the Site at the time that SWPPP was in effect, including stormwater controls (type, design, operation, maintenance and location), areas of soil disturbance, drainage patterns on the site, and discharge points. If the SWPPPs did not accurately reflect the items required in Part IV.D. of the Permit, please indicate in detail what was not accurately reflected.

4. For the Site, please provide copies of any “incidences of noncompliance” reports that were submitted to IEPA as required by Section IV.D.4.f. of the Permit.
5. Please provide any aerial photos of the Site, in the original format and resolution, that You have taken since the start of construction at the Site and indicate the date of each photograph.
6. Please explain the relationship between Swinerton Builders, Big River Solar LLC, D.E. Shaw Group, and D.E. Shaw Renewable Investments (DESRI).
7. Please describe in detail the activities performed by You at the Site.
8. For each of the activities described in the previous request, please provide the approximate start and end dates for each activity. Please also identify all individuals who performed those activities on behalf of You, including the names phone numbers, email addresses, and mailing addresses for each such individual.